

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 4226

IN THE MATTER OF:

Served December 20, 1993

Formal Complaint of DD ENTERPRISES,)
INC., Trading as BELTWAY)
TRANSPORTATION SERVICE, Against)
RESTON LIMOUSINE SERVICE)

Case No. FC-93-01

On November 15, 1993, DD Enterprises, Inc., trading as Beltway Transportation Service (Beltway or complainant), filed a formal complaint against Reston Limousine Service (Reston or respondent).

The complaint alleges that Reston began operating a one-year contract for the United States Department of the Interior, Geological Survey (USGS), on October 1, 1993, using two 14-passenger vans over routes between Fairfax County, VA, and Washington, DC. The complaint further alleges that Reston violated the Compact by operating the contract without a certificate of authority and without having filed a contract tariff. Beltway requests that Reston cease operating the USGS contract until it has the necessary authority, that Reston file the appropriate contract tariff with the Commission, and that Reston enter into an agreement with a certificated carrier to operate the USGS contract until Reston is in compliance with the Compact.

Reston answered the complaint on November 30, 1993. The answer states that Reston has ceased operating the USGS contract, that it will not recommence operation of that contract until properly authorized, that a copy of a contract tariff will be filed as a supplement to its application for a certificate of authority, filed November 15, 1993, and that it has arranged with a certificated carrier to perform the USGS contract until a certificate of authority has been issued to Reston. Reston asserts that this satisfies the complaint and that, therefore, it should be withdrawn.

We agree that Reston has done all it can to effectuate the relief requested in Beltway's complaint. Reston has filed an application for operating authority. Reston also has filed, on behalf of Better Business Connection, Inc., trading as BBC Express (BBC), Carrier No. 227, a contract tariff obligating BBC to operate the USGS contract from December 1, 1993, through February 1, 1994. In the event Reston's application is approved, we will order Reston to file an appropriate tariff or tariffs. We do not agree, however, with the conclusion implied in Reston's request for withdrawal that its violations of Article XI, Section 6, of the Compact -- operating without a certificate of authority -- have been fully redressed.

The Compact, Title II, Article XIII, Section 6(f), provides that a person who knowingly and willfully violates a provision of the Compact shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation and that each day of the violation constitutes a separate violation. "Knowingly" means with perception of the underlying facts,

not that such facts establish a violation.¹ "Willfully" does not mean with evil purpose or criminal intent; rather, it describes "conduct marked by careless disregard whether or not one has the right so to act."² Employee negligence is no defense.³

Respondent explains that the violations arose out of its misunderstanding of representations made by USGS. Respondent relies on a letter from USGS confirming a "pre-award" meeting on September 14, 1993, at which time respondent was to have available for inspection a "WMATC [license] or proof of application." Respondent claims it understood "that even if the application itself was not on file, if the application fee was paid into the WMATC this would suffice to qualify [respondent] to perform the contract while the application was being processed." This is nonsense. An application cannot be processed if it is not filed. Further, if what respondent meant to say was that somehow it was under the impression it could operate the contract while its application for operating authority was being processed, which lawfully it could not, we are constrained to point out that respondent did not file its application until November 15, 1993 -- two months after it paid the application fee. Respondent's dilatory filing is the paradigm of careless disregard.

We find that respondent knowingly and willfully violated Article XI, Section 6, of the Compact, not because of the circumstances surrounding the tardy filing, although we would be fully justified in doing so, but because we had advised Reston -- well before the application fee was paid -- of the need for a certificate of authority prior to commencing operations in the Metropolitan District.

On April 6, 1993, the Commission received a letter from respondent announcing it was offering service in "14-25 passenger mini-buses." The Commission notified respondent by letter dated the same day that a carrier needs a certificate of authority to transport passengers for hire within the Metropolitan District. The Metropolitan District was explicitly defined in the letter. Respondent was advised to check with the Commission about its operations. The letter specifically warned of the penalties for conducting operations within the Metropolitan District "without the required operating authority." Commission records show that respondent received the letter on April 7, 1993, placing respondent on notice that operation of 14-passenger vehicles in the Metropolitan District without a certificate of authority might be unlawful. At that point, the onus was on respondent to ensure that its operations were in compliance with the Compact.⁴ Accordingly, respondent's subsequent operation of the USGS contract without proper authority is found to be knowing and willful.⁵

¹ In re Madison Limo. Serv., Inc., No. AP-91-39, Order No. 3914 (Mar. 25, 1992) (on reconsideration).

² United States v. Illinois Cent. R.R., 303 U.S. 239, 242-43, 58 S. Ct. 533, 535 (1938).

³ 58 S. Ct. at 535.

⁴ In re Omnibus Corp., No. 380, Order No. 1762 (Oct. 26, 1977).

⁵ Order No. 3914; Order No. 1762.

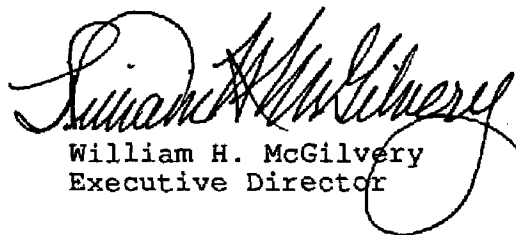
The civil forfeiture provision of the Compact serves at least two functions: deterrence of future violations and disgorgement of unjust profits.⁶ The record indicates that Reston operated the USGS contract on 40 separate days during October and November. Under the contract, the minimum revenue for that service is \$14,400. According to the financial statements filed with Reston's application for operating authority, its average actual and projected net operating margin from 1991 through 1994 is 8.77 percent. Reston's profit from unauthorized operations is estimated to be approximately \$1,263.

The Commission will assess a civil forfeiture against Reston in the amount of \$250 per day, for a total of \$10,000. The Commission will suspend all but \$1,500, in recognition of respondent's attempt, albeit meager and deficient, to initiate the application process for a certificate of authority before the starting date of the contract and before this complaint was filed.⁷

In the event Reston's application is approved, no certificate will be issued prior to the date the assessment is paid.

THEREFORE, IT IS ORDERED that Reston Limousine Service is hereby directed to pay to the Commission by money order, certified check, or cashiers check, within thirty days from the date of this order, the sum of one thousand five hundred dollars (\$1,500).

BY DIRECTION OF THE COMMISSION; COMMISSIONERS DAVENPORT, SCHIFTER, AND SHANNON:


William H. McGilvery
Executive Director

⁶ In re Japan Travelers Serv., Inc., & Hideo Koga, No. MP-92-36, Order No. 4019 (Nov. 23, 1992); In re Madison Limo. Serv., Inc., No. AP-91-39, Order No. 3891 (Feb. 24, 1992).

⁷ See Air Couriers Int'l Ground Transp. Servs., Inc., t/a Passenger Express, & United Mgmt. Corp., t/a Passenger Express, No. MP-92-05, Order No. 3955 (June 15, 1992) (suspension in recognition of application filed prior to complaint).